

FILED

AUG 31 2006

**BEFORE THE DEPARTMENT OF INSURANCE NEBRASKA DEPARTMENT
STATE OF NEBRASKA OF INSURANCE**

STATE OF NEBRASKA)	CAUSE NO.: A-1668
DEPARTMENT OF INSURANCE,)	
)	
PETITIONER,)	
)	FINDINGS OF FACT,
vs.)	CONCLUSIONS OF LAW,
)	RECOMMENDED ORDER AND
CRISTINA GONZALEZ,)	ORDER
)	
RESPONDENT.)	

This matter came on for hearing on the 29th day of August, 2006, before Christine M. Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Eric Dunning. Cristina Gonzalez ("Respondent") was not present at the proceedings. Appearing on Respondent's behalf was counsel, Jill Daley, 1101 Farnam Street, #300, Omaha, NE 68102. The Rules of Evidence were not requested and the hearing was governed accordingly. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Simon Delos-Reyes and Amy Wragge provided testimony in support of the Department's case. Evidence was introduced and the matter taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed Nebraska resident insurance producer whose registered mailing address with the Department is 1611 Frederick Street, Omaha, NE 68108. (Ex. 1). Respondent received her resident insurance producer license on

October 31, 2004. (Ex. 2).

2. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

3. On or about June 13, 2006, the Department served the Petition and Notice of Hearing on Respondent by certified mail, return receipt requested, at her address of record. Respondent did claim the certified letter on or about June 14, 2006. The return receipt card was received at the Department on or about June 16, 2006. (Ex. 1).

4. Subsequently, the hearing was continued twice until the hearing was held on August 29, 2006. Each continuance was served upon Respondent's counsel by certified mail, return receipt requested. (Ex. 1).

5. On or about October or November of 2004, Respondent began employment as an insurance producer/office staff with the Simon Delos-Reyes Insurance Agency and with the Amy J. Wragge Insurance Agency. Mr. Delos-Reyes and Ms. Wragge share the same office space at 5052 S. 108th Street, Omaha, NE 68127 and are agents for American Family Insurance Company.

6. Respondent's job duties included placing new insurance business, receiving funds from clients, issuing receipts, servicing insurance accounts, and issuing proof of insurance cards.

7. On or about October 20, 2005, Respondent accepted a cash payment from Servando Ramos in the amount of \$270.00 for premium payment on a new commercial policy on behalf of the Amy Wragge Agency. Respondent issued a receipt as evidenced by page 2 of Exhibit 4, however, Respondent did not issue the policy nor did she deposit the cash funds with Amy Wragge. The hearing officer finds Respondent's conduct to violate *Neb. Rev. Stat. §44-4059(1)(d)*, improperly withholding, misappropriating, or

converting any money or property received in the course of doing insurance business, and §44-4059 (1)(h), demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state, and §44-319 which requires Respondent to be responsible in a fiduciary capacity for all funds received or collected as an insurance producer.

8. On or about December 13, 2005, Respondent accepted a cash payment from Carlos Gonzalez in the amount of \$195.00 for insurance premium payment on account. Respondent issued a receipt as evidenced by page 2 of Exhibit 6. Respondent reported payment of \$114.00 cash to Simon Delos-Reyes, as evidenced by the computer generated receipt, page 3 of Exhibit 6. Thus, \$81.00 of the cash payment is unaccounted for. The hearing officer finds Respondent's conduct to violate *Neb. Rev. Stat. §44-4059(1)(d), (h), and §44-319*.

9. On or about December 24, 2005, Respondent accepted a cash payment from Norma Gutierrez in the amount of \$200.00 for insurance premium payment on account. Respondent issued a receipt as evidenced by page 2 of Exhibit 5. Respondent reported payment of \$91.00 cash to Simon Delos-Reyes, as evidenced by the computer generated receipt, page 3 of Exhibit 5. Thus, \$109.00 of the cash payment is unaccounted for. The hearing officer finds Respondent's conduct to violate *Neb. Rev. Stat. §44-4059(1)(d), (h), and §44-319*.

10. On or about January 28, 2006, Respondent accepted a cash payment from Yvonne Cantu in the amount of \$87.00 for insurance premium payment for a new policy. Respondent issued a receipt as evidenced by page 2 of Exhibit 7, however, Respondent did not issue the insurance policy nor did she deposit said funds with Simon Delos-

Reyes. The hearing officer finds Respondent's conduct to violate *Neb. Rev. Stat.* §44-4059(1)(d), (h), and §44-319.

11. On or about February 10, 2006, Respondent accepted a cash payment from Oxwaldo Rodriguez in the amount of \$125.00 for insurance premium payment on account. Respondent issued a receipt as evidenced by page 2 of Exhibit 8, however, Respondent did not deposit said funds with Simon Delos-Reyes for posting to the Rodriguez account. The hearing officer finds Respondent's conduct to violate *Neb. Rev. Stat.* §44-4059(1)(d), (h), and §44-319.

12. On or about February 15, 2006, Respondent accepted a cash payment from Alma Lopez in the amount of \$228.76 for insurance premium payment for a new auto insurance policy. Respondent issued a receipt as evidenced by page 2 of Exhibit 9, however, Respondent did not deposit said funds with Amy Wragge. The hearing officer finds Respondent's conduct to violate *Neb. Rev. Stat.* §44-4059(1)(d), (h), and §44-319.

13. There is a question whether Alma Lopez had an auto insurance policy in effect from February 16, 2006 to on or about April 26, 2006, the date Ms. Lopez noticed her payment of \$228.76 was not posted to her account. Although Ms. Lopez had paid \$228.76 on February 15, 2006, it is unclear whether a policy was issued. The hearing officer does not make a finding on this issue.

14. Amy Wragge issued a check in the amount of \$228.76 on May 10, 2006, to Alma Lopez to reimburse Ms. Lopez for the cash payment misappropriated by Respondent.

15. On or about March 14, 2006, Respondent accepted a cash payment from Mayra Pasillas in the amount of \$185.00 for insurance premium payment on account. Respondent issued a receipt as evidenced by page 2 of Exhibit 3. Respondent reported

payment of \$105.00 cash to Simon Delos-Reyes, as evidenced by the computer generated receipt, page 3 of Exhibit 3. Thus, \$80.00 of the cash payment is unaccounted for. The hearing officer finds Respondent's conduct to violate *Neb. Rev. Stat.* §44-4059(1)(d), (h), and §44-319.

16. On or about March 29, 2006, Respondent accepted a cash payment from Raul Mancinas in the amount of \$200.00 for insurance premium payment on account. Respondent issued a receipt as evidenced by page 2 of Exhibit 10. Respondent did not report the payment to Simon Delos-Reyes for posting to Mancinas's account. The hearing officer finds Respondent's conduct to violate *Neb. Rev. Stat.* §44-4059(1)(d), (h), and §44-319.

17. Respondent's counsel argues that this proceeding is a vendetta by Simon Delos-Reyes and Amy Wragge because Respondent was planning to start her own insurance agency. The evidence does not support this argument. Delos-Reyes and Wragge are required, pursuant to *Neb. Rev. Stat.* §44-393 and the Insurance Producers Licensing Act, to report Respondent's actions to the Department.

18. Respondent's counsel further argues that because none of the alleged victims testified at the hearing, Respondent cannot be held accountable. The hearing officer disagrees. The hearing officer finds Simon Delos-Reyes and Amy Wragge to be credible witnesses. Based on the evidence provided and the testimony of Simon Delos-Reyes and Amy Wragge, the hearing officer finds Respondent misappropriated a minimum of \$980.76 cash funds during the period of time October 2005 to March 29, 2006. Said funds were to be applied to the insurance clients' accounts to pay for current or future insurance premium obligations.

CONCLUSIONS OF LAW

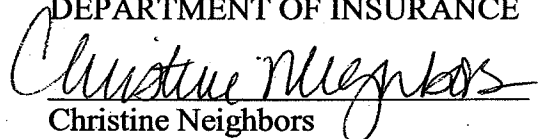
1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to *Neb. Rev. Stat. §44-4041 et seq.*
2. The Department has personal jurisdiction over Respondent.
3. Respondent violated *Neb. Rev. Stat. §44-4059(1)(d) and (h)*, and *Neb. Rev. Stat. §44-319*.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's resident insurance producer license be revoked.

Dated this 31st day of August, 2006.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Christine Neighbors
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska Department of Insurance v. Cristina Gonzalez, Cause No.: A-1668.

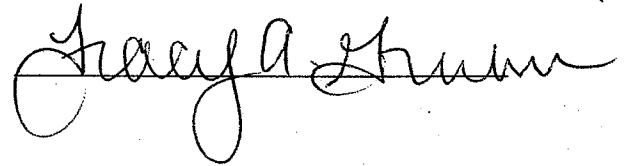
Dated this 31st day of August, 2006.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon the Respondent by mailing a copy to Respondent's counsel, Jill Daley at 1101 Farnam Street, #300, Omaha, NE 68102 by certified mail, return receipt requested, on this 31st day of August, 2006.

A handwritten signature in cursive script, appearing to read "Tracy A. Shum". The signature is written in dark ink and is positioned to the right of the text block above it.